


Agenda Item No:	5	
Committee:	Employment Committee	
Date:	October 6 2023	
Report Title:	Revised Capability Policy	

Cover sheet:

.3 Purpose / Summary

The purpose of this report is to inform the Employment Committee of the updated Capability Policy.

.4 Key Issues

The Council has a comprehensive framework of people and health and safety policies in place. These policies are reviewed in accordance with an ongoing programme of reviews.

- The Council has reviewed and updated the existing Capability Policy, which was first implemented in January 2012
- This policy outlines Fenland District Council's approach to managing shortfalls in an employee's capability to do their job in including sickness absence. This policy defines the responsibilities of both its employees and the Managers.
- The aim of the policy is to ensure:
 - Cases of poor performance and/or absence are handled fairly and consistently.
 - Employees are offered appropriate support and training.
 - All employees are aware of the performance and standards of work expected of them.

The recent review of the policy has recommended the following changes:

- The revised policy (with tracked changes) is shown at **Appendix 1**.
- A 'clean copy' of the revised policy is shown at **Appendix 2**.
- A comprehensive consultation process has also been undertaken on this revised policy with CMT, the Council's wider Management Team and also with the Management and Trade Union and Staff Partnership group (MTSP, who have endorsed the changes.
- This revised policy is now being recommended for formal adoption and communication to staff.

.5 Recommendations

It is recommended that Employment Committee notes the attached policy and approves the adoption of the revised Capability Policy.

Wards Affected	All
Portfolio Holder	Cllr Boden - Finance Portfolio Holder and Leader of the Council
Report Originator and Contact Officer	Sam Anthony - Head of HR & OD santhony@fenland.gov.uk 01354 622268

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<p>Date Agreed With UNISON: 15/08/2013</p>	<p>Date of Effect: 01.11.04</p>

1.0 INTRODUCTION

1.1 The Capability Policy sets out the steps ~~The Fenland District~~ Council will take to manage shortfalls in an employee's capability to do their job, including unacceptable levels of absence.

1.2 This policy runs parallel with, but is not part of, the disciplinary procedure. ~~The Fenland District~~ Council recognises that poor job performance and poor capability should not, the first instance, be treated as "disciplinary offences".

This policy should also be read in conjunction with the Performance Management Guidelines.

1.3 This policy will ensure that:

- Cases of poor performance and/or absence are handled fairly and consistently with any underlying reasons and mitigating circumstances taken into ~~account~~ account.
- Employees are offered appropriate support and training within a performance review framework.
- All employees are aware of the performance and standards of work expected of them.

2.0 RESPONSIBILITIES

All employees have a responsibility to:

- Take full accountability for their own attendance, performance and behaviour.
- Perform in line with the Council's Core Competencies framework taking into account agreed personal development needs.
- Use all required work tools and equipment required in the correct way.
- Contribute to 121's and to engage in objective setting, problem solving, review and evaluation.
- Work with managers constructively to address any underlying issues which may be affecting performance and/or attendance.
- Move forward their learning and development by taking ownership for their personal development.
- Be open to constructive feedback.
- Cooperate fully/proactively with all aspects of this policy and process.

Managers will have a responsibility to ensure that:

- All employees are properly and adequately trained to undertake their duties, and are provided with the correct tools and equipment.
- All employees are fully aware of the standard of performance, attendance and behaviour required.

- All employees receive 121's and Springboards to ensure that they are aware of their targets.
- They investigate all instances of poor performance/poor capability and explore the reasons for this consistently.
- This process and associated guidelines are applied consistently and fairly.
- They will discuss any issues in a timely and consistent manner.
- Guidance is sought from HR wherever appropriate and at the earliest opportunity.

3.0 DAY TO DAY MANAGEMENT

- 3.1 The first stage in dealing with poor job performance and/or absence is to determine whether the matter is one of capability or misconduct. This can normally be ascertained by investigation.

Incapability is where the employee has received all necessary training but still cannot achieve a satisfactory level of performance and/or attendance through no fault of his/her own, for example as a result of poor health. If, on the other hand, the employee fails to reach the required standard of performance as a result of carelessness, negligence or lack of effort, this will be treated under the disciplinary procedure as misconduct.

- 3.2 Performance targets, timescales and tools such as training or other guidance will be discussed as part of normal day-to-day management, usually in one-to-one meetings (for individual performance issues) or in team meetings (for team performance). Such discussions will be ~~recorded~~ recorded, and any actions clearly set out and adhered to.
- 3.3 If there appears to be a capability shortfall the manager will provide clear examples which illustrate the shortfall.
- 3.4 Once the manager has reviewed the evidence s/he will decide what action, if any, is necessary. Any action will be commensurate with the provisions of the Capability Policy and Procedure and will normally start with the informal stage, as described below.

4.0 CAPABILITY PROCEDURE

4.1 Informal one to one meeting:

Where employees have not addressed and improved their underperformance and/or absence as part of the normal performance management discussion the manager will invite the employee to an informal meeting. As the meeting is 'informal action', neither party will be accompanied nor will the right of representation exist, as the aim is to try and resolve matters in an informal

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capacity. As part of this meeting, the employee may be offered access to additional training, support or role clarification as appropriate to the situation.

The aim of this meeting is to try and help the employee rapidly address their under-performance. A problem-solving approach will be taken to address the situation. During the meeting:

- The employee will be provided with objective examples of the areas of under-performance which are causing concern.
- They will be asked to explore possible reasons for the performance shortfall.
- The standards of required job performance and/or attendance will be confirmed to the employee and the employee will be set a performance improvement plan (PIP) (see appendix A) including short term objectives which they need to achieve by a specified timescale.
- Additional support required by the employee will be identified and, where reasonable, provided by the Council.
- The possibility that medical/disability related reasons may be affecting the employee's performance will be explored. If this is the case, the manager should refer to HR and the employee will be expected to authorise Access to Medical Records and see a member of the Occupational Health Service team and/or an independent medical consultant.
- The timetable for achievement of the performance improvement plan will be set by the manager but will normally be a minimum of 4 weeks and a maximum of 12 weeks; during this time, the manager will hold regular informal interim review meetings with the employee both to provide feedback on progress and to encourage and motivate improved performance.
- The manager will confirm to the employee that the formal stages of the Capability Policy will be implemented if the employee fails to improve sufficiently with sustained satisfactory performance and/or attendance standards.
- File notes will be made and a copy given to the employee for their record (Appendix A).

4.1.1 The employee will be advised of their responsibility for managing self performance, although the manager will facilitate this where such input is necessary.

4.1.2 The employee and manager will sign their agreement to the Individual Performance Improvement Plan and will keep a copy each. Only when reasonable efforts to agree corrective action have failed may the manager impose the Individual Performance Improvement Plan.

4.1.3 At a review the manager will either sign the Individual Performance Improvement Plan off, if the employee has demonstrated sustained performance to the required standard; or extend the timescales, giving reasons and a new deadline. If there has been insufficient improvement, or

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there is a further shortfall in performance, the formal stage of the capability policy will be implemented, and the employee will be requested to attend a Stage 1 Formal Capability Meeting.

4.2 The Formal Stages (1&2)

4.2.1 Stage 1

If the informal approach to improving performance has been unsuccessful, the employee will be advised of this, and will be advised that the first stage of the formal procedure will be followed.

Managers will be accompanied by a member of the HR team whose role it will be to act as a management witness, ask questions as appropriate, provide advice on procedural matters and to take notes where necessary.

4.2.2 The purpose of the Stage 1 meeting is to:

- Identify clearly and fairly the ways in which the employee is under-performing providing examples as appropriate.
- Explore with the employee what may be the possible causes for the shortfall in performance and/or attendance.
- Allow the employee to have the opportunity to challenge and/or put forward any facts and evidence for consideration.
- Reconfirm the standards of performance and/or attendance which are expected of job holders.
- Explore the support which has already been provided as part of the informal process and investigate if other support may be required by the employee in order to improve their performance and/or attendance.
- Confirm that the employee is clear as to the concerns about performance and/or attendance, the standards that are required, and understands the particular areas where there are shortfalls.

Having given consideration to the contents of the discussions, the manager will confirm one of the following four outcomes:

- the employee will continue to be managed under the informal stage of the policy.
- the employee will be managed under the formal stages of the Capability Policy.
- if consideration of redeployment to another post may be appropriate under the circumstances.
- no further action is appropriate at this time.

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4.2.3 Cases will be heard by a panel comprising a Chair who will also manage the hearing and a Human Resources expert who will also advise the hearing. Both the Chair and the Human Resources expert will make the hearing decision. The Chair will not be the manager who dealt with the shortfall on a day to day or informal basis.

4.2.4 At the Stage 1 meeting, the manager will confirm to the employee that if they fail to improve and sustain satisfactory performance and/or attendance standards that it may be necessary to move to Stage 2 of the formal Capability Policy and that ultimately a failure to achieve and maintain satisfactory performance could lead to dismissal.

4.2.5. The employee will be invited to attend any such formal hearing by letter, confirming:

- The place, date and time for the meeting (giving no less than a week’s notice);
- The nature of the hearing, namely that it is a formal hearing under the Capability Procedure and identifying the relevant stage.;
- A clear description of the performance shortfall, or shortfalls.;
- The names, job titles and panel roles of the panel members.;
- Copies of any documentary evidence being relied upon.;
- The right to be accompanied by a Trade Union representative or work colleague and a request to notify the manager of who their representative is, if they choose to exercise this right.;
- The possible outcomes of the hearing.;
- The requirement for the employee to send copies of any documentary evidence being relied upon to the manager without delay.

4.3.1 Stage 2 and Final Formal Meeting

If a satisfactory improvement has not been achieved since the Stage 1 Formal meeting, and the agreed support has been given, the matter will be referred to the next stage of the process. The employee will be invited to the Stage 2 (Final) Formal Meeting chaired by the Head of Service or Corporate Director to further review and consider their performance and/or attendance.

4.3.1 The outcome of the Stage 2 Final Formal Meeting could be either:

- No further action if the performance and/or attendance has improved.;
- The offer of redeployment to an alternative role.;
- Dismissal; or
 - In exceptional circumstances, an extension to the review period to give one final opportunity for improvement.
 - The manager in exceptional circumstances may agree a further monitoring period. Extensions to the monitoring period should be no more than one-month intervals. It must be made clear that failure to

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improve their work performance within the review period may result in the termination of their contract.

4.3.2 Redeployment

Alternative employment may be considered as a last resort alternative to dismissal, only where:

- Both informal and both formal reviews have taken place.;
- a genuine redeployment opportunity exists, as the Council will not be required to create such an opportunity.;
- the employee has the required skills and attributes for the proposed new job.;
- No improvement has been achieved following the support and training being provided as agreed at the meetings, and.;
- the employee is still unable to perform the job adequately.

If an offer of alternative employment is made, the employee's performance will continue to be monitored for a specified time, to ensure satisfactory performance in the new post. A clear time limit must be specified for this, which will depend on the particular circumstance. The employee must be informed that their contract of employment may still be terminated if the unsatisfactory work performance does not improve.

There is no guarantee that alternative employment will be at a similar level or pay rate. The individual will not be entitled to any form of salary protection. If an alternative position is accepted, it will be subject to a trial period (normally 4 weeks). If the trial period is unsuccessful, or suitable redeployment cannot be found, the dismissal will proceed.

4.4. Dismissal

If the outcome of the Stage 2 (Final) Formal Meeting is dismissal on grounds of incapability, this must be confirmed in writing including a right of appeal. Dismissal is with notice, for which the employee may be paid in lieu if appropriate.

4.4.1 Appeal against Dismissal

An employee who has been dismissed under this process will have a right of appeal against that decision. Any employee who wishes to exercise their right of appeal must do so, in writing to the Head of HR & OD, within ten working days of receipt of the decision of the adjudicating panel, stating their reasons for appeal. Full details of how to appeal will be provided in the letter that confirms the outcome of the capability hearing.

Once an appeal has been submitted and accepted, a meeting will be arranged to address/hear the appeal. This meeting will include:

- The appellant and their representative

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- The Appeal Panel, comprised of: ~~2~~1 members of the Corporate Management Team, 1 Head of Service and an HR expert Advisor
- The investigating officer or other party (as appropriate)
- HR officer(s) to support the investigating officer as necessary
- A recording device
- ~~A note taker~~

All appeal meetings will follow a set agenda (Appendix C). The employee must take all reasonable steps to attend the appeal meeting.

4.4.2 Exceptions to the procedure

The sequence of meetings outlined above may not be followed when:

- There is a case of sudden incapacity to perform a critical part of the job, e.g.e.g., loss of driving licence where driving is a key part of the role, or
- In cases of serious / gross incompetence.

In both of the above circumstances, a full investigation will take place. It will not be appropriate to take the employee through a staged process, particularly if there are serious consequences for the Council, customers or other employees. The employee will be invited to a Stage 2 Final and Formal Meeting (with the Head of Service or Director). Following the investigation all options will be considered and dismissal on the grounds of capability may result.

In addition to the above, cases of long-term sickness in excess of 9 months will be referred to the final stages of the formal capability process and **exempted from the earlier stages.**

5.0 FORMAL CAPABILITY HEARING PROCESS

- 5.1 The Chair will introduce the hearing, repeat the possible outcomes and deal with any queries. The Chair will note whether the employee is represented and check that the parties have exchanged all the documents they intend to rely on. All information will normally be exchanged before the hearing, but in the exceptional event that this is not possible then an adjournment will be considered.
- 5.2 The manager will explain the nature of the shortfall, giving examples, providing evidence and summarising what efforts have previously been made to correct the shortfall.
- 5.3 The employee/or the employee's representative will be offered the opportunity to question the manager on the information provided.

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- 5.4 The employee or the employee’s representative will present the employee’s case, stating whether the complaint is accepted or not, proving contrary evidence if appropriate or making points in mitigation.
- 5.5 The manager will be offered the opportunity to question the employee’s case.
- 5.6 The manager will summarise the case, followed by the employee or the representative. No fresh information can be introduced during summing up.
- 5.7 At any time during the hearing, the panel may ask questions seeking clarification; however substantive questions would be reserved until the summary is concluded.
- 5.8 At the end of the hearing, the panel will adjourn to make its decision.
- 5.9 The parties will be recalled, normally on the same day, to hear the panel’s decision. In giving the decision the Chair will cover:
- The decision, which could include a further Individual Performance Improvement Plan, dismissal on grounds of capability (after a Stage 2 Final Capability Hearing) no further action, or some other action.
 - The reasons for the decision and any mitigating factors considered.
 - Unless the decision is to dismiss on grounds of capability (after a Stage 2 Final Capability Hearing), the employee will be given specific details of the performance improvements required, including timescales and any arrangements and support to facilitate the performance improvements. The employee will be advised of the consequences if they are unable to meet or sustain the required standards in time. The panel will agree a review date with the parties.
 - Except in dismissal cases, all of the above information will be recorded on an Individual Performance Improvement Plan (Appendix B) and shared with the employee.
 - The employee will be informed the right and method of appeal.
 - At the review the manager will either sign the Individual Performance Improvement Plan off, if the employee has demonstrated sustained performance to the required standard; or extend the timescales, giving reasons and a new deadline; or refer the case on to the final stage of the Procedure, as described below.
- 5.10 All of this information will be confirmed in writing by Human Resources within 5 working days.
- 5.11 If it is not possible to make the decision on the day of the hearing the decision will be given in writing within 5 working days. In such circumstances the parties must be recalled to the hearing to be advised of the delayed decision and to be given reasons for the delay. Such delays will be exceptional.

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6.0 REVIEW

The principles laid down in this policy form part of all employees' contracts of employment. Human Resources will monitor this Policy and Procedure to help ensure fair and consistent application. This Policy will be reviewed at intervals to ensure that it remains fit for purpose.

Please contact Human Resources for further information.

Author	Human Resources
Date	January 2012
Status	<u>Approved</u>
Date of revisions (if applicable)	August 2013 <u>July 2019, August 2023</u>
Date agreed	August 2013
Date for revision	August 2015
Link to other People Policies	Sickness Absence Disciplinary (Conduct) Performance Management Guidelines Code of Conduct

APPENDIX A – CAPABILITY PROCEDURE

Individual performance improvement plan (INFORMAL)

EMPLOYEE’S NAME:	
MANAGER’S NAME:	
DATE:	

DESCRIPTION OF PERFORMANCE SHORTFALL(S):

Agreed Action Required	Extra Support Needed if any	Responsibility:	Deadline:

REVIEW DATE AND TIME:

EMPLOYEE’S SIGNATURE:	
MANAGER’S SIGNATURE:	

DECISION AT REVIEW MEETING:

The level of performance is now satisfactory so no further action needed.
 The review period should be extended until _____ because:

The review meeting date and time is:

Refer to formal Capability Procedure as performance is still unsatisfactory.

APPENDIX B – CAPABILITY PROCEDURE

Individual performance improvement plan (FORMAL)

EMPLOYEE'S NAME:	
MANAGER'S NAME:	
DATE:	

DESCRIPTION OF PERFORMANCE SHORTFALL(S):

Agreed Action Required	Extra Support Needed if any	Responsibility:	Deadline:

REVIEW DATE AND TIME:

EMPLOYEE'S SIGNATURE:	
MANAGER'S SIGNATURE:	

DECISION AT REVIEW MEETING:

The level of performance is now satisfactory, so no further action is needed.
 The review period should be extended until _____ because:

The review meeting date and time is:

Refer to next stage of Procedure as performance is still unsatisfactory.

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Appendix C - Appeals Meeting Procedure

1. Person chairing the meeting will open the meeting. Each party present will introduce themselves, in the following order:
 - Chairman/Panel
 - Officers
 - Appellant
 - Representatives
 - Note-taker.

The Appeals Panel will comprise of 2 members of the Corporate Management Team and an HR Officer.

Person chairing the hearing will then confirm procedure as set out below:

2. Appellant/representative will clarify their grounds for appeal. (e.g.e.g., what issue(s) they are seeking to resolve)

Presentation of the Appellant's case

- a. Appellant/representative to present details of their case.
 - b. Questions from the chair/panel to the Appellant/representative
 - c. Questions from the other party/their representative to the Appellant/representative
 - d. (If required) Appellant can call a witness in support of their case.
 - e. Questions to witness from panel, and other party/representative.
 - f. Summary of Appellant's case
3. Presentation of the other party's case
 - a. Other party/ representative presents details of case.
 - b. Questions from the chair/panel to the Other party /representative
 - c. Questions from the Appellant/representative to the other party/their representative
 - d. (If required) Other party can call a witness in support of their case.
 - e. Questions to witness from panel, and Appellant/representative.
 - f. Summary of other party's case
 4. Person chairing the meeting to confirm if further clarification is required by any party on any of the details presented from:
 - Panel
 - Appellant/representative
 - Other party/representative
 5. Closing submission from Appellant/representative.

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6. Closing submission from other party/representative.
7. Panel adjourn to make decision.
8. The meeting will then be reconvened, and a verbal decision communicated. This decision will be confirmed in writing within 5 working days of the meeting. The chair will then close the meeting.

CAPABILITY POLICY

1.0 INTRODUCTION

- 1.1 The Capability Policy sets out the steps the Council will take to manage shortfalls in an employee's capability to do their job, including unacceptable levels of absence.
- 1.2 This policy runs parallel with, but is not part of, the disciplinary procedure. The Council recognises that poor job performance and poor capability should not, the first instance, be treated as "disciplinary offences".

This policy should also be read in conjunction with the Performance Management Guidelines.

- 1.3 This policy will ensure that:
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 - Employees are offered appropriate support and training within a performance review framework.
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2.0 RESPONSIBILITIES

All employees have a responsibility to:

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- Perform in line with the Council's Core Competencies framework taking into account agreed personal development needs.
- Use all required work tools and equipment required in the correct way.
- Contribute to 121's and to engage in objective setting, problem solving, review and evaluation.
- Work with managers constructively to address any underlying issues which may be affecting performance and/or attendance.
- Move forward their learning and development by taking ownership for their personal development.
- Be open to constructive feedback.
- Cooperate fully/proactively with all aspects of this policy and process.

Managers will have a responsibility to ensure that:

- All employees are properly and adequately trained to undertake their duties and are provided with the correct tools and equipment.
- All employees are fully aware of the standard of performance, attendance and behaviour required.
- All employees receive 121's and Springboards to ensure that they are aware of their targets.
- They investigate all instances of poor performance/poor capability and explore the reasons for this consistently.
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- 3.4 Once the manager has reviewed the evidence s/he will decide what action, if any, is necessary. Any action will be commensurate with the provisions of the Capability Policy and Procedure and will normally start with the informal stage, as described below.

4.0 CAPABILITY PROCEDURE

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The aim of this meeting is to try and help the employee rapidly address their under-performance. A problem-solving approach will be taken to address the situation. During the meeting:

- The employee will be provided with objective examples of the areas of under-performance which are causing concern.
- They will be asked to explore possible reasons for the performance shortfall.
- The standards of required job performance and/or attendance will be confirmed to the employee and the employee will be set a performance improvement plan (PIP) (see appendix A) including short term objectives which they need to achieve by a specified timescale.
- Additional support required by the employee will be identified and, where reasonable, provided by the Council.
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- The manager will confirm to the employee that the formal stages of the Capability Policy will be implemented if the employee fails to improve sufficiently with sustained satisfactory performance and/or attendance standards.
- File notes will be made, and a copy given to the employee for their record (Appendix A).

- 4.1.1 The employee will be advised of their responsibility for managing self performance, although the manager will facilitate this where such input is necessary.
- 4.1.2 The employee and manager will sign their agreement to the Individual Performance Improvement Plan and will keep a copy each. Only when reasonable efforts to agree corrective action have failed may the manager impose the Individual Performance Improvement Plan.
- 4.1.3 At a review the manager will either sign the Individual Performance Improvement Plan off, if the employee has demonstrated sustained performance to the required standard; or extend the timescales, giving reasons and a new deadline. If there has been insufficient improvement, or there is a further shortfall in performance, the formal stage of the capability policy will be implemented, and the employee will be requested to attend a Stage 1 Formal Capability Meeting.

4.2 The Formal Stages (1&2)

4.2.1 Stage 1

If the informal approach to improving performance has been unsuccessful, the employee will be advised of this, and will be advised that the first stage of the formal procedure will be followed.

Managers will be accompanied by a member of the HR team whose role it will be to act as a management witness, ask questions as appropriate, provide advice on procedural matters and to take notes where necessary.

4.2.2 The purpose of the Stage 1 meeting is to:

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- Explore with the employee what may be the possible causes for the shortfall in performance and/or attendance.
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- Reconfirm the standards of performance and/or attendance which are expected of job holders.
- Explore the support which has already been provided as part of the informal process and investigate if other support may be required by the employee in order to improve their performance and/or attendance.
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Having given consideration to the contents of the discussions, the manager will confirm one of the following four outcomes:

- the employee will continue to be managed under the informal stage of the policy.
- the employee will be managed under the formal stages of the Capability Policy.
- if consideration of redeployment to another post may be appropriate under the circumstances.
- no further action is appropriate at this time.

4.2.3 Cases will be heard by a panel comprising a Chair who will also manage the hearing and a Human Resources expert who will also advise the hearing. Both the Chair and the Human Resources expert will make the hearing decision. The Chair will not be the manager who dealt with the shortfall on a day to day or informal basis.

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- A clear description of the performance shortfall, or shortfalls.
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- Copies of any documentary evidence being relied upon.
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- The possible outcomes of the hearing.
- The requirement for the employee to send copies of any documentary evidence being relied upon to the manager without delay.

4.3.1 Stage 2 and Final Formal Meeting

If a satisfactory improvement has not been achieved since the Stage 1 Formal meeting, and the agreed support has been given, the matter will be referred to the next stage of the process. The employee will be invited to the Stage 2 (Final) Formal Meeting chaired by the Head of Service or Corporate Director to further review and consider their performance and/or attendance.

4.3.1 The outcome of the Stage 2 Final Formal Meeting could be either:

- No further action if the performance and/or attendance has improved.
- The offer of redeployment to an alternative role.
- Dismissal; or
 - In exceptional circumstances, an extension to the review period to give one final opportunity for improvement.
 - The manager in exceptional circumstances may agree a further monitoring period. Extensions to the monitoring period should be no more than one-month intervals. It must be made clear that failure to improve their work performance within the review period may result in the termination of their contract.

4.3.2 Redeployment

Alternative employment may be considered as a last resort alternative to dismissal, only where:

- Both informal and both formal reviews have taken place.
- a genuine redeployment opportunity exists, as the Council will not be required to create such an opportunity.
- the employee has the required skills and attributes for the proposed new job.
- No improvement has been achieved following the support and training being provided as agreed at the meetings, and.
- the employee is still unable to perform the job adequately.

If an offer of alternative employment is made, the employee's performance will continue to be monitored for a specified time, to ensure satisfactory performance in the new post. A clear time limit must be specified for this, which will depend on the particular circumstance. The employee must be informed that their contract of employment may still be terminated if the unsatisfactory work performance does not improve.

There is no guarantee that alternative employment will be at a similar level or pay rate. The individual will not be entitled to any form of salary protection. If an alternative position is accepted, it will be subject to a trial period (normally 4 weeks). If the trial period is unsuccessful, or suitable redeployment cannot be found, the dismissal will proceed.

4.4. Dismissal

If the outcome of the Stage 2 (Final) Formal Meeting is dismissal on grounds of incapability, this must be confirmed in writing including a right of appeal. Dismissal is with notice, for which the employee may be paid in lieu if appropriate.

4.4.1 Appeal against Dismissal

An employee who has been dismissed under this process will have a right of appeal against that decision. Any employee who wishes to exercise their right of appeal must do so, in writing to the Head of HR & OD, within ten working days of receipt of the decision of the adjudicating panel, stating their reasons for appeal. Full details of how to appeal will be provided in the letter that confirms the outcome of the capability hearing.

Once an appeal has been submitted and accepted, a meeting will be arranged to address/hear the appeal. This meeting will include:

- The appellant and their representative
- The Appeal Panel, comprised of: 1 member of the Corporate Management Team, 1 Head of Service and an HR expert
- The investigating officer or other party (as appropriate)
- HR officer(s) to support the investigating officer as necessary
- A recording device

All appeal meetings will follow a set agenda (Appendix C). The employee must take all reasonable steps to attend the appeal meeting.

4.4.2 Exceptions to the procedure

The sequence of meetings outlined above may not be followed when:

- There is a case of sudden incapacity to perform a critical part of the job, e.g., loss of driving licence where driving is a key part of the role, or
- In cases of serious / gross incompetence.

In both of the above circumstances, a full investigation will take place. It will not be appropriate to take the employee through a staged process, particularly if there are serious consequences for the Council, customers or other employees. The employee will be invited to a Stage 2 Final and Formal Meeting (with the Head of Service or Director). Following the investigation all options will be considered and dismissal on the grounds of capability may result.

In addition to the above, cases of long-term sickness in excess of 9 months will be referred to the final stages of the formal capability process and **exempted from the earlier stages**.

5.0 FORMAL CAPABILITY HEARING PROCESS

5.1 The Chair will introduce the hearing, repeat the possible outcomes and deal with any queries. The Chair will note whether the employee is represented and check that the parties have exchanged all the documents they intend to rely on. All information will normally be exchanged before the hearing, but in

the exceptional event that this is not possible then an adjournment will be considered.

- 5.2 The manager will explain the nature of the shortfall, giving examples, providing evidence and summarising what efforts have previously been made to correct the shortfall.
- 5.3 The employee/or the employee's representative will be offered the opportunity to question the manager on the information provided.
- 5.4 The employee or the employee's representative will present the employee's case, stating whether the complaint is accepted or not, proving contrary evidence if appropriate or making points in mitigation.
- 5.5 The manager will be offered the opportunity to question the employee's case.
- 5.6 The manager will summarise the case, followed by the employee or the representative. No fresh information can be introduced during summing up.
- 5.7 At any time during the hearing, the panel may ask questions seeking clarification; however substantive questions would be reserved until the summary is concluded.
- 5.8 At the end of the hearing, the panel will adjourn to make its decision.
- 5.9 The parties will be recalled, normally on the same day, to hear the panel's decision. In giving the decision the Chair will cover:
 - The decision, which could include a further Individual Performance Improvement Plan, dismissal on grounds of capability (after a Stage 2 Final Capability Hearing) no further action, or some other action.
 - The reasons for the decision and any mitigating factors considered.
 - Unless the decision is to dismiss on grounds of capability (after a Stage 2 Final Capability Hearing), the employee will be given specific details of the performance improvements required, including timescales and any arrangements and support to facilitate the performance improvements. The employee will be advised of the consequences if they are unable to meet or sustain the required standards in time. The panel will agree a review date with the parties.
 - Except in dismissal cases, all the above information will be recorded on an Individual Performance Improvement Plan (Appendix B) and shared with the employee.
 - The employee will be informed the right and method of appeal.
 - At the review the manager will either sign the Individual Performance Improvement Plan off, if the employee has demonstrated sustained performance to the required standard; or extend the timescales, giving reasons and a new deadline; or refer the case on to the final stage of the Procedure, as described below.

- 5.10 All of this information will be confirmed in writing by Human Resources within 5 working days.
- 5.11 If it is not possible to make the decision on the day of the hearing the decision will be given in writing within 5 working days. In such circumstances the parties must be recalled to the hearing to be advised of the delayed decision and to be given reasons for the delay. Such delays will be exceptional.

6.0 REVIEW

The principles laid down in this policy form part of all employees' contracts of employment. Human Resources will monitor this Policy and Procedure to help ensure fair and consistent application. This Policy will be reviewed at intervals to ensure that it remains fit for purpose.

Please contact Human Resources for further information.

Author	Human Resources
Date	January 2012
Status	Approved
Date of revisions (if applicable)	August 2013 July 2019, August 2023
Date agreed	August 2013
Date for revision	August 2015
Link to other People Policies	Sickness Absence Disciplinary (Conduct) Performance Management Guidelines Code of Conduct

APPENDIX A – CAPABILITY PROCEDURE

Individual performance improvement plan (INFORMAL)

EMPLOYEE'S NAME:	
MANAGER'S NAME:	
DATE:	

DESCRIPTION OF PERFORMANCE SHORTFALL(S):

Agreed Action Required	Extra Support Needed if any	Responsibility:	Deadline:

REVIEW DATE AND TIME:

EMPLOYEE'S SIGNATURE:	
MANAGER'S SIGNATURE:	

DECISION AT REVIEW MEETING:

The level of performance is now satisfactory so no further action needed.
 The review period should be extended until _____ because:

The review meeting date and time is:

Refer to formal Capability Procedure as performance is still unsatisfactory.

APPENDIX B – CAPABILITY PROCEDURE

Individual performance improvement plan (FORMAL)

EMPLOYEE'S NAME:	
MANAGER'S NAME:	
DATE:	

DESCRIPTION OF PERFORMANCE SHORTFALL(S):

Agreed Action Required	Extra Support Needed if any	Responsibility:	Deadline:

REVIEW DATE AND TIME:

EMPLOYEE'S SIGNATURE:	
MANAGER'S SIGNATURE:	

DECISION AT REVIEW MEETING:

The level of performance is now satisfactory, so no further action is needed.
 The review period should be extended until _____ because:

The review meeting date and time is:

Refer to next stage of Procedure as performance is still unsatisfactory.

Appendix C - Appeals Meeting Procedure

1. Person chairing the meeting will open the meeting. Each party present will introduce themselves, in the following order:

- Chairman/Panel
- Officers
- Appellant
- Representatives
- Note-taker.

The Appeals Panel will comprise of 2 members of the Corporate Management Team and an HR Officer.

Person chairing the hearing will then confirm procedure as set out below:

2. Appellant/representative will clarify their grounds for appeal. (e.g., what issue(s) they are seeking to resolve)

Presentation of the Appellant's case

- a. Appellant/representative to present details of their case.
- b. Questions from the chair/panel to the Appellant/representative
- c. Questions from the other party/their representative to the Appellant/representative
- d. (If required) Appellant can call a witness in support of their case.
- e. Questions to witness from panel, and other party/representative.
- f. Summary of Appellant's case

3. Presentation of the other party's case

- a. Other party/ representative presents details of case.
- b. Questions from the chair/panel to the Other party /representative
- c. Questions from the Appellant/representative to the other party/their representative
- d. (If required) Other party can call a witness in support of their case.
- e. Questions to witness from panel, and Appellant/representative.
- f. Summary of other party's case

4. Person chairing the meeting to confirm if further clarification is required by any party on any of the details presented from:

- Panel
- Appellant/representative
- Other party/representative

5. Closing submission from Appellant/representative.
6. Closing submission from other party/representative.
7. Panel adjourn to make decision.
8. The meeting will then be reconvened, and a verbal decision communicated. This decision will be confirmed in writing within 5 working days of the meeting. The chair will then close the meeting.